

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LATRON R. WILLIAMSON,

Defendant-Appellant.

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UNPUBLISHED  
September 4, 2003

No. 239364  
Wayne Circuit Court  
LC No. 01-000934-01

Before: Markey, P.J., and Cavanagh and Saad, P.J.

MEMORANDUM.

Following a jury trial, defendant was convicted of two counts of third-degree criminal sexual conduct, MCL 750.520(d)(1)(a), and one count of fourth-degree criminal sexual conduct, MCL 750.520(e)(1)(a). He was sentenced to two terms of fifty months to fifteen years' imprisonment for his convictions of third-degree criminal sexual conduct and to a concurrent term of one to two years' imprisonment for his conviction of fourth-degree criminal sexual conduct. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

On appeal, defendant challenges the scoring of prior record variable three (PRV 3), prior high severity juvenile adjudications, and offense variable three (OV 3), physical injury to the victim. Defendant is not entitled to resentencing based on the misscoring of PRV 3 because the issue has been forfeited under MCR 6.429(C). *People v Wilson*, 252 Mich App 390, 391-393; 652 NW2d 488 (2002); *People v McGuffey*, 251 Mich App 155; 649 NW2d 801 (2002).

Defendant did, however, properly preserve his challenge to the scoring of OV 3. The Sentencing Information Report originally scored this variable at zero. At sentencing the prosecutor successfully argued that five points should be scored because of evidence of bleeding. Defendant argued that any bleeding sustained by the victim was not the result of defendant's criminal acts, but because of ovarian/follicular cysts. The sentencing court has discretion in determining the number of points to be scored provided there is evidence on the record that adequately supports the score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Upon review of the record, we agree with defendant that the trial court erred in scoring five points for OV 3. Although there is evidence that the victim experienced bleeding, there is nothing to support the conclusion that this bleeding was the result of the criminal acts of defendant. Reduction of the five points for OV 3 results in a total Offense Variable score of

forty-five, placing defendant in OV Level IV, rather than OV Level V for which the guidelines range was calculated. However, defendant's minimum sentence of fifty months is still within the guidelines range, and remand for resentencing is unnecessary. *People v Witherspoon*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2003).

Affirmed.

/s/ Jane E. Markey

/s/ Mark J. Cavanagh

/s/ Henry William Saad